IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO.334 OF 2007
IN
L.C. SUIT NO.5455 OF 2004

The Municipal Corporation of
Gr. Mumbai ..Appellants.

Vs.

Aziz Gulamali Amroliwala ..Respondent.

Ms.Geeta Joglekar for the Appellants.
Mr.Kapil Shetye i/b.M/s.K.P.Tiwari & Co. for the Respondents.

CORAM : A.S. OKA, J.
DATED : 11TH JUNE, 2007

P.C. :

Heard Advocates appearing for the parties.

2. The Appellant Municipal Corporation is the original Defendant and the Respondent is the original Plaintiff.

3. In a suit filed by the Respondent, a Notice of Motion was taken out by the Respondent praying for mandatory injunction directing the Appellant to restore the premises admeasuring 15 ft. x 10 ft. situated at Chander Apartment, now known as Yusuf Mahal, Marol Maroshi Road, Andheri (East), Mumbai 400 059.

4. By the impugned order, the learned trial Judge rejected the prayers made in the Notice of Motion. However, without prejudice to the rights of the Respondent the learned trial Judge directed the Appellants to provide temporary alternate accommodation to the Respondent of the size of 6 ft. x 6 ft. as per the policy of the Corporation.

5. The learned Advocate for the Appellants submitted that the grant of alternate accommodation is not as a matter of right and the Appellants can grant alternate accommodation provided the case of the Respondent is covered by the policy. It is submitted that no prayer for grant of accommodation was made by the Respondent in his Notice of Motion. The third submission is that the learned Judge could not have directed grant of alternate accommodation at the same place where the earlier structure which was demolished was situated.

6. I have considered the submissions. In the letter dated 7.6.2004, sent by the Assistant Engineer (Building & Factories), K/East Ward,

Andheri (East) to the Respondents, it is stated :-

> "Now, the Commissioner, vide his order dated 5.5.2004 has revoked the permissions granted by the then M.C. on 20.10.1989 and also A.M.C. (E.S.)'s orders dated 14.11.1996, and ordered for the removal of the said structure i.e. Sangam Furniture situated in compulsory open space of Yusuf Mahel (then Chandan Apartment). Further, the alternative accommodation to the owner of the land structure will be granted for the size 6' x 6' as per the policy of the Corporation."

The said letter shows that the Appellants has shown willingness to offer alternative accommodation of the size of 6' x 6' as per the policy of the Appellants Corporation.

8. While considering prayer for grant of a wider relief, the learned trial Judge has granted a limited relief in favour of the Respondent in view of categorical statement made by the Appellants in the letter dated 7.6.2004. The learned Judge has not at all stated that the temporary alternative accommodation should be provided to the Respondent at a particular place. The learned Judge has directed that the accommodation will be offered as per the policy of the Appellants. Therefore, there

is no merit in the third submission made by the Advocate for the Appellants. It is obvious that the Respondent cannot claim that the temporary alternative accommodation should be provided at the same place where the earlier structure was located.

9. Subject to what is stated above, no case is made out for interference with the discretionary order passed by the trial Court.

10. Subject to observations made out, the Appeal is dismissed. Civil Application does not survive. No order as to costs.

(A.S. OKA, J.)